

ACKNOWLEDGING THE CONTRIBUTION OF THE IROQUOIS CONFEDERACY OF NATIONS TO THE DEVELOPMENT OF THE UNITED STATES CONSTITUTION AND TO REAFFIRM THE CONTINUING GOVERNMENT-TO-GOVERNMENT RELATIONSHIP BETWEEN INDIAN TRIBES AND THE UNITED STATES ESTABLISHED IN THE CONSTITUTION

SEPTEMBER 30 (legislative day, SEPTEMBER 26), 1988.—Ordered to be printed

Mr. INOUE, from the Select Committee on Indian Affairs,
submitted the following

REPORT

[To accompany S. Con. Res. 76]

The Select Committee on Indian Affairs, to which was referred the concurrent resolution (S. Con. Res. 76) having considered the same, reports favorably thereon without amendment to the text with an amendment to the preamble and recommends that the concurrent resolution as amended do pass.

The amendment is as follows:

On page 2, line 2, strike the words "explicitly modeled upon" and insert in lieu thereof the words "influenced by the political system developed by".

PURPOSE

Senate Concurrent Resolution 76 acknowledges the contribution of the Six Nations of the Iroquois Confederacy to the development of the United States Constitution and reaffirms the continuing government-to-government relationship between Indian tribes and the United States that was established in the Constitution.

BACKGROUND

In the spring of 1986, a group known as the Indian Rights Association (IRA) based in Philadelphia began planning efforts to ensure that the celebration of the Bicentennial of the United States Constitution considered both the historical and the contemporary relationships of Indian tribes with the United States. The IRA circulated a survey questionnaire to all tribes and Alaska Native villages, as well as to 1,300 social scientists and law faculty.

In response to the IRA's questionnaire, President Wendell Chino of the Mescalero Apache Nation, and Chairman Roger A. Jourdain of the Red Lake Band of Chippewa Indians, called a meeting in December 1986 in Kansas City of tribal chairmen from various parts of the country. The ten chairmen in attendance were Joe American Horse (Oglala Sioux Nation), Joe De La Cruz, (Quinault Indian Nation), Arthur Gahbow (Mille Lacs Band of Chippewa Indians), Ernest House (Ute Mountain Ute Tribe), Larry Kinley (Lummi Business Council), Earl Old Person (Blackfeet Nation), Richard Real Bird (Crow Nation), and Jack Thorpe (Sac and Fox of Oklahoma). These Chairmen formed an alliance with the IRA, calling themselves the "Alliance of American Indian Leaders and the Indian Rights Association."

The Alliance decided not to officially organize, or to have staff or budget. Alliance participants simply represent their respective tribes or the Indian Rights Association with participation in the Alliance open to all official tribal leaders.

The goal of the Alliance is the maintenance of the unique, Constitutionally recognized government-to-government relationship between the United States and Indian tribes. This requires significant involvement by Indian tribes, as governments, in the Federal Executive and Legislative branch decision making process relating to Indian tribes.

The Alliance's founding tribal leaders first agreed-upon action was achieving passage of a Congressional resolution reaffirming the Constitutionally recognized government-to-government relationship of the United States and Indian tribes, and acknowledging the Iroquois contribution to the Constitution.

On September 17, 1987, the 200th anniversary of the signing of the U.S. Constitution, Chairman Inouye participated in a traditional pipe ceremony conducted by the Red Lake Band of Chippewa Indians in honor of the introduction of Senate Concurrent Resolution 76. On December 2, 1987, the Select Committee on Indian Affairs held a hearing on the resolution. Alliance members, legal scholars and historians presented testimony on the fundamental aspects of tribal relationships with the United States.

Testimony was received regarding the growing movement that arose earlier in this century to unilaterally abrogate treaties, terminate Indian tribes, and assimilate Indian people into the mainstream American culture. This policy period reflected an effort to extricate the United States from its treaty and statutory obligations toward Indian tribes. The movement peaked in 1953 and 1954 when House Concurrent Resolution 108 was enacted in the 83rd Congress along with legislation that removed civil and criminal jurisdiction from many tribes without their consent. House Concurrent Resolution 108 expressed the "sense of Congress" in support of ending Federal supervision of Indian people "as rapidly as possible." House Concurrent Resolution 108 was specifically repudiated by Congress earlier this year with the passage of P.L. 100-297.

Senate Concurrent Resolution 76 envisions a stable approach to relations between the United States and Indian tribes—a departure from the cycle of crisis that seems unending with respect to problems facing Indian tribes and communities throughout the nation. It is being raised at an historical moment in United States history.

More than 200 years ago, the framers of the United States Constitution reviewed the principles of democracy and the democratic institutions of the Six Nations of the Iroquois Confederacy, and then drew from the Iroquois' experiences in constructing the United State's form of government. Senate Concurrent Resolution 76 acknowledges this vital Iroquois contribution to the very foundation of democracy upon which the United States is established.

Each reservation, tribe, tribal council and tribal chairperson has immediate pressing problems and priorities. Indeed, this Committee has spent the past two years actively engaged with tribes in addressing problem-specific and tribal-specific issues. But Congress must also focus on policy. The resolution is intended to bring attention to the fundamental issues that give continuing life to the specific problems that seem to perpetually beset the tribes. Otherwise, problems will simply repeat themselves. This resolution will help to restore and affirm a policy direction consistent with the United States Constitution and the requirements of good faith, integrity and basic justice toward Indian tribes.

In the context of the Bicentennial of the United States Constitution, it is appropriate that the United States reaffirm its relationship with Indian nations and in doing so, look back and understand the unique status of tribes as perceived by the framers of the Constitution. It is appropriate to express appreciation to the Iroquois and other Indian nations for their contribution to the democratic way of life which is preserved in that great document.

LEGISLATIVE HISTORY

Senate Concurrent Resolution 76 was introduced on September 16, 1987 by Senator Inouye, with Senators Evans, DeConcini, Burdick, McCain and fourteen other Senators. The Select Committee on Indian Affairs held a hearing on Senate Concurrent Resolution 76 on December 2, 1987. The House Interior and Insular Affairs Committee held a hearing on September 22, 1988, on the companion measure, House Concurrent Resolution 331.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Select Committee on Indian Affairs, in open business session on September 21, 1988, by unanimous vote and with a quorum present, recommends that the Senate pass Senate Concurrent Resolution 76, with an amendment.

EXPLANATION OF COMMITTEE AMENDMENT

The amendment adopted in Committee to the third clause of the resolution will conform the language of Senate Concurrent Resolution 76 to the language of House Concurrent Resolution 331 which is pending in the House and is otherwise identical to Senate Concurrent Resolution 76.

SECTION-BY-SECTION ANALYSIS

The whereas clauses describe and acknowledge the contribution of the Iroquois Confederacy of Nations to the development of the U.S. Constitution and the constitutional basis of the government-to-

government relationship between Indian tribes and the Federal government. The resolution clauses acknowledge the historical debt owed by the United States to the Iroquois Confederacy and other Indian nations and reaffirms the government-to-government relationship, including an acknowledgement and reaffirmation of the trust responsibility of the U.S. to Indian tribes and Alaska Natives.

Specifically, Clauses 2 and 3 of the Resolution repudiate House Concurrent Resolution 108, passed during the 83rd Congress. The resolution expressed the policy of the Congress during the 1950's to terminate relationships between the United States Government and Indian tribes. Repeal of House Concurrent Resolution 108 was recommended by President Nixon in his July 8, 1970, Special Message to the Congress and by President Reagan in his January 24, 1983, American Indian Policy Statement. Copies of these presidential statements are attached as appendices to the Committee's Report. The Resolution as reported by the Committee is consistent with the policy of the Executive Branch enunciated by every President since President Eisenhower.

Clause 4 of the Resolution expresses long-established canons of construction used by the United States Supreme Court to interpret Indian treaties. In construing Indian treaties, the Supreme Court has consistently stated that ambiguous expressions in treaties must be resolved in favor of the Indians. E.g., *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164, 174 (1973); *Squire v. Capoeman*, 351 U.S. 1, 7 (1965); *Choctaw Nation v. United States*, 318 U.S. 423, 431-32 (1943); *Choate v. Trapp*, 224 U.S. 665, 675 (1912). Accord, *Washington v. Washington State Commercial Passenger Fishing Vessel Assn.*, 99 S. Ct. 3055, 3070 (1979). Furthermore, the Supreme Court has consistently stated that treaties should be construed as the Indians would have understood them. E.g., *Washington v. Washington State Commercial Passenger Fishing Vessel Assn.*, 99 S. Ct. 3055, 3070 (1979); *Choctaw Nation v. Oklahoma*, 397 U.S. 620, 631 (1970); *Jones v. Meehan*, 175 U.S. 1, 11 (1899).

COST AND BUDGETARY CONSIDERATIONS

Senate Concurrent Resolutions are not enacted into positive law; therefore, no cost will incur to the Federal government as a result of passage of Senate Concurrent Resolution 76.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee notes passage of Senate Concurrent Resolution 76 will have no impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee received no communications from the Executive branch on Senate Concurrent Resolution 76.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that there will be no changes in existing law made by Senate Concurrent Resolution 76, as amended.

APPENDIX

STATEMENT OF PRESIDENT RONALD W. REAGAN ON AMERICAN INDIAN POLICY, JANUARY 24, 1983

"This Administration believes that responsibilities and resources should be restored to the governments which are closest to the people served. This philosophy applies not only to state and local governments, but also to federally recognized American Indian tribes.

When European colonial powers began to explore and colonize this land, they entered into treaties with sovereign Indian nations. Our new nation continued to make treaties and to deal with Indian tribes on a government-to-government basis. Throughout our history, despite periods of conflict and shifting national policies in Indian affairs, the government-to-government relationship between the United States and Indian tribes has endured. The Constitution, treaties, laws, and court decisions have consistently recognized a unique political relationship between Indian tribes and the United States which this Administration pledges to uphold.

In 1970, President Nixon announced a national policy of self-determination for Indian tribes. At the heart of the new policy was commitment by the federal government to foster and encourage tribal self-government. That commitment was signed into law in 1975 as the Indian Self-Determination and Education Assistance Act.

The principle of self-government set forth in this Act was a good starting point. However, since 1975, there has been more rhetoric than action. Instead of fostering and encouraging self-government, federal policies have by and large inhibited the political and economic development of the tribes. Excessive regulation and self-perpetuating bureaucracy have stifled local decisionmaking, thwarted Indian control of Indian resources, and promoted dependency rather than self-sufficiency.

This Administration intends to reverse this trend by removing the obstacles to self-government and by creating a more favorable environment for the development of healthy reservation economies. Tribal governments, the federal government, and the private sector will all have a role. This Administration will take a flexible approach which recognizes the diversity among tribes and the right of each tribe to set its own priorities and goals. Change will not happen overnight. Development will be charted by the tribes, not the federal government.

This Administration honors the commitment this nation made in 1970 and 1975 to strengthen tribal governments and lessen federal

control over tribal governmental affairs. This Administration is determined to turn these goals into reality. Our policy is to reaffirm dealing with Indian tribes on a government-to-government basis and to pursue the policy of self-government for Indian tribes without threatening termination.

In support of our policy, we shall continue to fulfill the federal trust responsibility for the physical and financial resources we hold in trust for the tribes and their members. The fulfillment of this unique responsibility will be accomplished in accordance with the highest standards.

TRIBAL SELF-GOVERNMENT

Tribal governments, like state and local governments, are more aware of the needs and desires of their citizens than is the federal government and should, therefore, have the primary responsibility for meeting those needs. The only effective way for Indian reservations to develop is through tribal governments which are responsive and accountable to their members.

Early in this nation's dealings with Indian tribes, federal employees began to perform Indian tribal government functions. Despite the Indian Self-Determination Act, major tribal government functions—enforcing tribal laws, developing and managing tribal resources, providing health and social services, educating children—are frequently still carried on by federal employees. The federal government must move away from this surrogate role which undermines the concept of self-government.

It is important to the concept of self-government that tribes reduce their dependence on federal funds by providing a greater percentage of the cost of their self-government. Some tribes are already moving in this direction. This Administration pledges to assist tribes in strengthening their governments by removing the federal impediments to tribal self-government and tribal resource development. Necessary federal funds will continue to be available. This Administration affirms the right of tribes to determine the best way to meet the needs of their members and to establish and run programs which best meet those needs.

For those small tribes which have the greatest need to develop core governmental capacities, this Administration has developed, through the Assistant Secretary of the Interior for Indian Affairs, the Small Tribes Initiative. This program will provide financial support necessary to allow these tribes to develop basic tribal administrative and management capabilities.

In keeping with the government-to-government relationship, Indian tribes are defined by law as eligible entities and receive direct funding, if they wish, in five block grant programs administered by the Department of Health and Human Services. These and other blocks to the states consolidated dozens of categorical federal domestic assistance programs to reduce fragmentation and overlap, eliminate excessive federal regulation, and provide for more local control. This Administration now proposes that Indian tribes be eligible for direct funding in the Title XX social services block, the block with the largest appropriation and the greatest flexibility in service delivery.

In addition, we are moving the White House liaison for federally-recognized tribes from the Office of Public Liaison to the Office of Intergovernmental Affairs, which maintains liaison with state and local governments. In the past several administrations, tribes have been placed along with vital interest groups, such as veterans, businessmen and religious leaders. In moving the tribal government contact within the White House Intergovernmental Affairs staff, this Administration is underscoring its commitment to recognizing tribal governments on a government-to-government basis.

Further, we are recommending that the Congress expand the authorized membership of the Advisory Commission on Intergovernmental Relations (42 U.S.C. 4273) to include a representative of Indian tribal governments. In the interim before Congressional action, we are requesting that the Assistant Secretary for Indian Affairs join the Commission as an observer. We also supported and signed into law the Indian Tribal Governmental Tax Status Act which provides tribal governments with essentially the same treatment under federal tax laws as applies to other governments with regard to revenue raising and saving mechanisms.

In addition, this Administration calls upon Congress to replace House Concurrent Resolution 108 of the 83rd Congress, the resolution which established the now discredited policy of terminating the federal-tribal relationship. Congress has implicitly rejected the termination policy by enacting the Indian Self-Determination and Education Assistance Act of 1975. However, because the termination policy declared in H. Con. Res. 108 has not been expressly and formally repudiated by a concurrent resolution of Congress, it continues to create among the Indian people an apprehension that the United States may not in the future honor the unique relationship between the Indian people and the federal government. A lingering threat of termination has no place in this Administration's policy of self-government for Indian tribes, and I ask Congress to again express its support of self-government.

These actions are but the first steps in restoring control to tribal governments. Much more needs to be done. Without sound reservation economies, the concept of self-government has little meaning. In the past, despite good intentions, the federal government has been one of the major obstacles to economic progress. This Administration intends to remove the impediments to economic development and to encourage cooperative efforts among the tribes, the federal government and the private sector in developing reservation economies.

DEVELOPMENT OF RESERVATION ECONOMIES

The economies of American Indian reservations are extremely depressed with unemployment rates among the highest in the country. Indian leaders have told this Administration that the development of reservation economies is their number one priority. Growing economies provide jobs, promote self-sufficiency, and provide revenue for essential services. Past attempts to stimulate growth have been fragmented and largely ineffective. As a result, involvement of private industry has been limited, with only infrequent success. Developing reservation economies offers a special

challenge: devising investment procedures consistent with the trust status; removing legal barriers which restrict the type of contracts tribes can enter into and reducing the numerous and complex regulations which hinder economic growth.

Tribes have had limited opportunities to invest in their own economies because often there has been no established resource base for community investment and development. Many reservations lack a developed physical infrastructure including utilities, transportation and other public services. They also often lack the regulatory, adjudicatory and enforcement mechanisms necessary to interact with the private sector for reservation economic development. Development on the reservation offers potential for tribes and individual entrepreneurs in manufacturing, agribusiness and modern technology, as well as fishing, livestock, arts and crafts and other traditional livelihoods.

Natural resources such as timber, fishing and energy provide an avenue of development for many tribes. Tribal governments have the responsibility to determine the extent and the methods of developing the tribe's natural resources. The federal government's responsibility should not be used to hinder tribes from taking advantage of economic development opportunities.

With regard to energy resources, both the Indian tribes and the nation stand to gain from the prudent development and management of the vast coal, oil, gas, uranium and other resources found on Indian lands. As already demonstrated by a number of tribes, these resources can become the foundation for economic development on many reservations while lessening our nation's dependence on imported oil. The federal role is to encourage the production of energy resources in ways consistent with Indian values and priorities. To that end, we have strongly supported the use of creative agreements such as joint ventures and other non-lease agreements for the development of Indian mineral resources.

It is the free market which will supply the bulk of the capital investments required to develop tribal energy and other resources. A fundamental prerequisite to economic development is capital formation. The establishment of a financial structure that is a part of the Indian reservation community is essential to the development of Indian capital formation.

Federal support will be made available to tribes to assist them in developing the necessary management capability and in attracting private capital. As a first step in that direction, we provided funds in the FY 1983 budget to provide seed money to tribes to attract private funding for economic development ventures on reservations. As more tribes develop their capital resource base and increase their managerial expertise, they will have an opportunity to realize the maximum return on their investments and will be able to share an increasing portion of the business risk.

It is the policy of this Administration to encourage private involvement, both Indian and non-Indian, in tribal economic development. In some cases, tribes and the private sector have already taken innovative approaches which have overcome the legislative and regulatory impediments to economic progress.

Since tribal governments have the primary responsibility for meeting the basic needs of Indian communities, they must be al-

lowed the chance to succeed. This Administration, therefore, is establishing a Presidential Advisory Commission on Indian Reservation Economies. The Commission, composed of tribal and private sector leaders, is to identify obstacles to economic growth in the public and private sector at all levels; examine and recommend changes in federal law, regulations and procedures to remove such obstacles; identify actions state, local and tribal governments could take to rectify identified problems; and recommend ways for the private sector, both Indian and non-Indian, to participate in the development and growth of reservation economies. It is also to be charged with the responsibility for advising the President on recommended actions required to create a positive environment for the development and growth of reservation economies.

Numerous federal agencies can offer specialized assistance and expertise to the tribes not only in economic development, but also in housing, health, education, job training, and other areas which are an integral part of reservation economies. It is to the advantage of the tribes, and in the interest of the taxpayers, that the federal role be fully reviewed and coordinated. Therefore, the Administration directs the Cabinet Council on Human Resources to act as a mechanism to ensure that federal activities are non-duplicative, cost effective, and consistent with the goal of encouraging self-government with a minimum of federal interference.

SUMMARY

This Administration intends to restore tribal governments to their rightful place among the governments of this nation and to enable tribal governments, along with state and local governments, to resume control over their own affairs.

This Administration has sought suggestions from Indian leaders in forming the policies which we have announced. We intend to continue this dialogue with the tribes as these policies are implemented.

The governmental and economic reforms proposed for the benefit of Indian tribes and their members cannot be achieved in a vacuum.

This nation's economic health—and that of the tribes—depends on adopting this Administration's full Economic Recovery Program. This program calls for eliminating excessive federal spending and taxes, removing burdensome regulations, and establishing a sound monetary policy. A full economic recovery will unleash the potential strength of the private sector and ensure a vigorous economic climate for development which will benefit not only Indian people, but all other Americans as well."

SPECIAL MESSAGE OF PRESIDENT RICHARD M. NIXON TO THE CONGRESS ON INDIAN AFFAIRS, JULY 8, 1970

To the Congress of the United States:

The first Americans—the Indians—are the most deprived and most isolated minority group in our nation. On virtually every scale of measurement—employment, income, education, health—the condition of the Indian people ranks at the bottom.

This condition is the heritage of centuries of injustice. From the time of their first contact with European settlers, the American Indians have been oppressed and brutalized, deprived of their ancestral lands and denied the opportunity to control their own destiny. Even the Federal programs which are intended to meet their needs have frequently proven to be ineffective and demeaning.

But the story of the Indian in America is something more than the record of the white man's frequent aggression, broken agreements, intermittent remorse and prolonged failure. It is a record also of endurance, of survival, of adaptation and creativity in the face of overwhelming obstacles. It is a record of enormous contributions to this country—to its art and culture, to its strength and spirit, to its sense of history and its sense of purpose.

It is long past time that the Indian policies of the Federal government began to recognize and build upon the capacities and insights of the Indian people. Both as a matter of justice and as a matter of enlightened social policy, we must begin to act on the basis of what the Indians themselves have long been telling us. The time has come to break decisively with the past and to create the conditions for a new era in which the Indian future is determined by Indian acts and Indian decisions.

SELF-DETERMINATION WITHOUT TERMINATION

The first and most basic question that must be answered with respect to Indian policy concerns the historic and legal relationship between the Federal government and Indian communities. In the past, this relationship has oscillated between two equally harsh and unacceptable extremes.

On the one hand, it has—at various times during previous Administrations—been the stated policy objective of both the Executive and Legislative branches of the Federal government eventually to terminate the trusteeship relationship between the Federal government and the Indian people. As recently as August of 1953, in House Concurrent Resolution 108, the Congress declared that termination was the long-range goal of its Indian policies. This would mean that Indian tribes would eventually lose any special standing they had under Federal law: the tax exempt status of their lands would be discontinued; Federal responsibility for their economic and social well-being would be repudiated; and the tribes themselves would be effectively dismantled. Tribal property would be divided among individual members who would then be assimilated into the society at large.

This policy of forced termination is wrong, in my judgment, for a number of reasons. First, the premises on which it rests are wrong. Termination implies that the Federal government has taken on a trusteeship responsibility for Indian communities as an act of generosity toward a disadvantaged people and that it can therefore discontinue this responsibility on a unilateral basis whenever it sees fit. But the unique status of Indian tribes does not rest on any premise such as this. The special relationship between Indians and the Federal government is the result instead of solemn obligations which have been entered into by the United States Government. Down through the years, through written treaties and through

formal and informal agreements, our government has made specific commitments to the Indian people. For their part, the Indians have often surrendered claims to vast tracts of land and have accepted life on government reservations. In exchange, the government has agreed to provide community services such as health, education and public safety, services which would presumably allow Indian communities to enjoy a standard of living comparable to that of other Americans.

This goal, of course, has never been achieved. But the special relationship between the Indian tribes and the Federal government which arises from these agreements continues to carry immense moral and legal force. To terminate this relationship would be no more appropriate than to terminate the citizenship rights of any other American.

The second reason for rejecting forced termination is that the practical results have been clearly harmful in the few instances in which termination actually has been tried. The removal of Federal trusteeship responsibility has produced considerable disorientation among the affected Indians and has left them unable to relate to a myriad of Federal, State and local assistance efforts. Their economic and social condition has often been worse after termination than it was before.

The third argument I would make against forced termination concerns the effect it has had upon the overwhelming majority of tribes which still enjoy a special relationship with the Federal government. The very threat that this relationship may someday be ended has created a great deal of apprehension among Indian groups and this apprehension, in turn, has had a blighting effect on tribal progress. Any step that might result in greater social, economic or political autonomy is regarded with suspicion by many Indians who fear that it will only bring them closer to the day when the Federal government will disavow its responsibility and cut them adrift.

In short, the fear of one extreme policy, forced termination, has often worked to produce the opposite extreme: excessive dependence on the Federal government. In many cases this dependence is so great that the Indian community is almost entirely run by outsiders who are responsible and responsive to Federal officials in Washington, D.C., rather than to the communities they are supposed to be serving. This is the second of the two harsh approaches which have long plagued our Indian policies. Of the Department of the Interior's programs directly serving Indians, for example, only 1.5 percent are presently under Indian control. Only 2.4 percent of HEW's Indian health programs are run by Indians. The result is a burgeoning Federal bureaucracy, programs which are far less effective than they ought to be, and an erosion of Indian initiative and morale.

I believe that both of these policy extremes are wrong. Federal termination errs in one direction, Federal paternalism errs in the other. Only by clearly rejecting both of these extremes can we achieve a policy which truly serves the best interests of the Indian people. Self-determination among the Indian people can and must be encouraged without the threat of eventual termination. In my

view, in fact, that is the only way that self-determination can effectively be fostered.

This, then, must be the goal of any new national policy toward the Indian people: to strengthen the Indian's sense of autonomy without threatening his sense of community. We must assure the Indian that he can assume control of his own life without being separated involuntarily from the tribal group. And we must make it clear that Indians can become independent of Federal control without being cut off from Federal concern and Federal support. My specific recommendations to the Congress are designed to carry out this policy.

1. Rejecting Termination

Because termination is morally and legally unacceptable, because it produces bad practical results, and because the mere threat of termination tends to discourage greater self-sufficiency among Indian groups, I am asking the Congress to pass a new Concurrent Resolution which would expressly renounce, repudiate and repeal the termination policy as expressed in House Concurrent Resolution 108 of the 83rd Congress. This resolution would explicitly affirm the integrity and right to continued existence of all Indian tribes and Alaska native governments, recognizing that cultural pluralism is a source of national strength. It would assure these groups that the United States Government would continue to carry out its treaty and trusteeship obligations to them as long as the groups themselves believed that such a policy was necessary or desirable. It would guarantee that whenever Indian groups decided to assume control or responsibility for government service programs, they could do so and still receive adequate Federal financial support. In short, such a resolution would reaffirm for the Legislative branch—as I hereby affirm for the Executive branch—that the historic relationship between the Federal government and the Indian communities cannot be abridged without the consent of the Indians.

2. The Right to Control and Operate Federal Programs

Even as we reject the goal of forced termination, so must we reject the suffocating pattern of paternalism. But how can we best do this? In the past, we have often assumed that because the government is obliged to provide certain services for Indians, it therefore must administer those same services. And to get rid of Federal administration, by the same token, often meant getting rid of the whole Federal program. But there is no necessary reason for this assumption. Federal support programs for non-Indian communities—hospitals and schools are two ready examples—are ordinarily administered by local authorities. There is no reason why Indian communities should be deprived of the privilege of self-determination merely because they receive monetary support from the Federal government. Nor should they lose Federal money because they reject Federal control.

For years we have talked about encouraging Indians to exercise greater self-determination, but our progress has never been commensurate with our promises. Part of the reason for this situation has been the threat of termination. But another reason is the fact

that when a decision is made as to whether a Federal program will be turned over to Indian administration, it is the Federal authorities and not the Indian people who finally make that decision.

This situation should be reversed. In my judgment, it should be up to the Indian tribe to determine whether it is willing and able to assume administrative responsibility for a service program which is presently administered by a Federal agency. To this end, I am proposing legislation which would empower a tribe or a group of tribes or any other Indian community to take over the control or operation of Federally-funded and administered programs in the Department of the Interior and the Department of Health, Education and Welfare whenever the tribal council or comparable community governing group voted to do so.

Under this legislation, it would not be necessary for the Federal agency administering the program to approve the transfer of responsibility. It is my hope and expectation that most such transfers of power would still take place consensually as a result of negotiations between the local community and the Federal government. But in those cases in which an impasse arises between the two parties, the final determination should rest with the Indian community.

Under the proposed legislation, Indian control of Indian programs would always be a wholly voluntary matter. It would be possible for an Indian group to select that program or that specified portion of a program that it wants to run without assuming responsibility for other components. The "right of retrocession" would also be guaranteed; this means that if the local community elected to administer a program and then later decided to give it back to the Federal government, it would always be able to do so.

Appropriate technical assistance to help local organizations successfully operate these programs would be provided by the Federal government. No tribe would risk economic disadvantage from managing its own programs, under the proposed legislation, locally-administered programs would be funded on equal terms with similar services still administered by Federal authorities. The legislation I propose would include appropriate protections against any action which endangered the rights, the health, the safety or the welfare of individuals. It would also contain accountability procedures to guard against gross negligence or mismanagement of Federal funds.

This legislation would apply only to services which go directly from the Federal government to the Indian community; those services which are channeled through State or local governments could still be turned over to Indian control by mutual consent. To run the activities for which they have assumed control, the Indian groups could employ local people or outside experts. If they chose to hire Federal employees who had formerly administered these projects, those employees would still enjoy the privileges of Federal employee benefit programs—under special legislation which will also be submitted to the Congress.

Legislation which guarantees the right of Indians to contract for the control or operation of Federal programs would directly channel more money into Indian communities, since Indians themselves would be administering programs and drawing salaries which now

often go to non-Indian administrators. The potential for Indian control is significant, for we are talking about programs which annually spend over \$400 million in Federal funds. A policy which encourages Indian administration of these programs will help build greater pride and resourcefulness within the Indian community. At the same time, programs which are managed and operated by Indians are likely to be more effective in meeting Indian needs.

I speak with added confidence about these anticipated results because of the favorable experience of programs which have already been turned over to Indian control. Under the auspices of the Office of Economic Opportunity, Indian communities now run more than 60 community action agencies which are located on Federal reservations. OEO is planning to spend some \$57 million in Fiscal Year 1971 through Indian-controlled grantees. For over four years, many OEO-funded programs have operated under the control of local Indian organizations and the results have been most heartening.

Two Indian tribes—the Salt River Tribe and the Zuni Tribe—have recently extended this principle of local control to virtually all of the programs which the Bureau of Indian Affairs has traditionally administered for them. Many Federal officials, including the Agency Superintendent, have been replaced by elected tribal officers or tribal employees. The time has now come to build on these experiences and to extend local Indian control—at a rate and to the degree that the Indians themselves establish.

3. Restoring the Sacred Lands Near Blue Lake

No government policy toward Indians can be fully effective unless there is a relationship of trust and confidence between the Federal government and the Indian people. Such a relationship cannot be completed overnight; it is inevitably the product of a long series of words and actions. But we can contribute significantly to such a relationship by responding to just grievances which are especially important to the Indian people.

One such grievance concerns the sacred Indian lands at and near Blue Lake in New Mexico. From the fourteenth century, the Taos Pueblo Indians used these areas for religious and tribal purposes. In 1906, however, the United States Government appropriated these lands for the creation of a national forest. According to a recent determination of the Indian Claims Commission, the government "took said lands from petitioner without compensation."

For 64 years, the Taos Pueblo has been trying to regain possession of this sacred lake and watershed area in order to preserve it in its natural condition and limit its non-Indian use. The Taos Indians consider such action essential to the protection and expression of their religious faith.

The restoration of the Blue Lake lands to the Taos Pueblo Indians is an issue of unique and critical importance to Indians throughout the country. I therefore take this opportunity wholeheartedly to endorse legislation which would restore 48,000 acres of sacred land to the Taos Pueblo people, with the statutory promise that they would be able to use these lands for traditional purposes and that except for such uses the lands would remain forever wild.

With the addition of some perfecting amendments, legislation now pending in the Congress would properly achieve this goal. That legislation (H.R. 471) should promptly be amended and enacted. Such action would stand as an important symbol of this government's responsiveness to the just grievances of the American Indians.

4. Indian Education

One of the saddest aspects of Indian life in the United States is the low quality of Indian education. Drop-out rates for Indians are twice the national average and the average educational level for all Indians under Federal supervision is less than six school years. Again, at least a part of the problem stems from the fact that the Federal government is trying to do for Indians what many Indians could do better for themselves.

The Federal government now has responsibility for some 221,000 Indian children of school age. While over 50,000 of these children attend schools which are operated directly by the Bureau of Indian Affairs, only 750 Indian children are enrolled in schools where the responsibility for education has been contracted by the BIA to Indian school boards. Fortunately, this condition is beginning to change. The Ramah Navajo Community of New Mexico and the Rough Rock and Black Water Schools in Arizona are notable examples of schools which have recently been brought under local Indian control. Several other communities are now negotiating for similar arrangements.

Consistent with our policy that the Indian community should have the right to take over the control and operation of federally funded programs, we believe every Indian community wishing to do so should be able to control its own Indian schools. This control would be exercised by school boards selected by Indians and functioning much like other school boards throughout the nation. To assure that this goal is achieved, I am asking the Vice President, acting in his role as Chairman of the National Council on Indian Opportunity,¹ to establish a Special Education Subcommittee of that Council. The members of that Subcommittee should be Indian educators who are selected by the Council's Indian members. The Subcommittee will provide technical assistance to Indian communities wishing to establish school boards, will conduct a nationwide review of the educational status of all Indian school children in whatever schools they may be attending, and will evaluate and report annually on the status of Indian education, including the extent of local control. This Subcommittee will act as a transitional mechanism; its objective should not be self-perpetuation but the actual transfer of Indian education to Indian communities.

We must also take specific action to benefit Indian children in public schools. Some 141,000 Indian children presently attend general public schools near their homes. Fifty-two thousand of these are absorbed by local school districts without special Federal aid.

¹ Executive Order 11551, dated August 11, 1970, provided for additional Indian members on the National Council on Indian Opportunity. A White House release dated August 31, announcing the appointment of eight new members to the Council, is printed in the Weekly Compilation of Presidential Documents (vol. 6, p. 1132).

But 89,000 Indian children attend public schools in such high concentrations that the State or local school districts involved are eligible for special Federal assistance under the Johnson-O'Malley Act.² In Fiscal Year 1971, the Johnson-O'Malley program will be funded at a level of some \$20 million.

This Johnson-O'Malley money is designed to help Indian students, but since funds go directly to the school districts, the Indians have little if any influence over the way in which the money is spent. I therefore propose that the Congress amend the Johnson-O'Malley Act so as to authorize the Secretary of the Interior to channel funds under this act directly to Indian tribes and communities. Such a provision would give Indians the ability to help shape the schools which their children attend and, in some instances, to set up new school systems of their own. At the same time, I am directing the Secretary of the Interior to make every effort to ensure that Johnson-O'Malley funds which are presently directed to public school districts are actually spent to improve the education of Indian children in these districts.

5. Economic Development Legislation

Economic deprivation is among the most serious of Indian problems. Unemployment among Indians is ten times the national average; the unemployment rate runs as high as 80 percent on some of the poorest reservations. Eighty percent of reservation Indians have an income which falls below the poverty line; the average annual income for such families is only \$1,500. As I said in September of 1968, it is critically important that the Federal government support and encourage efforts which help Indians develop their own economic infrastructure. To that end, I am proposing the "Indian Financing Act of 1970."

This act would do two things:

1. It would broaden the existing Revolving Loan Fund, which loans money for Indian economic development projects. I am asking that the authorization for this fund be increased from approximately \$25 million to \$75 million.
2. It would provide additional incentives in the form of loan guarantees, loan insurance and interest subsidies to encourage private lenders to loan more money for Indian economic projects. An aggregate amount of \$200 million would be authorized for loan guarantee and loan insurance purposes.

I also urge that legislation be enacted which would permit any tribe which chooses to do so to enter into leases of its land for up to 99 years. Indian people now own over 50 million acres of land that are held in trust by the Federal government. In order to compete in attracting investment capital for commercial, industrial and recreational development of these lands, it is essential that the tribes be able to offer long-term leases. Long-term leasing is preferable to selling such property since it enables tribes to preserve the trust ownership of their reservation homelands. But existing law limits the length of time for which many tribes can enter into such leases. Moreover, when long-term leasing is allowed, it has been

² Public Law No. 638, June 4, 1936 (49 Stat. 1458; 25 U.S.C. 452-455).

granted by Congress on a case-by-case basis, a policy which again reflects a deep-rooted pattern of paternalism. The twenty reservations which have already been given authority for long term leasing have realized important benefits from that privilege and this opportunity should now be extended to all Indian tribes.

Economic planning is another area where our efforts can be significantly improved. The comprehensive economic development plans that have been created by both the Pima-Maricopa and the Zuni Tribes provide outstanding examples of interagency cooperation in fostering Indian economic growth. The Zuni Plan, for example, extends for at least five years and involves a total of \$55 million from the Departments of Interior, Housing and Urban Development, and Health, Education and Welfare and from the Office of Economic Opportunity and the Economic Development Administration. I am directing the Secretary of the Interior to play an active role in coordinating additional projects of this kind.

6. More Money for Indian Health

Despite significant improvements in the past decade and a half, the health of Indian people still lags 20 to 25 years behind that of the general population. The average age at death among Indians is 44 years, about one-third less than the national average. Infant mortality is nearly 50% higher for Indians and Alaska natives than for the population at large; the tuberculosis rate is eight times as high and the suicide rate is twice that of the general population. Many infectious diseases such as trachoma and dysentery that have all but disappeared among other Americans continue to afflict the Indian people.

This Administration is determined that the health status of the first Americans will be improved. In order to initiate expanded effort in this area, I will request the allocation of an additional \$10 million for Indian health programs for the current fiscal year. This strengthened Federal effort will enable us to address ourselves more effectively to those health problems which are particularly important to the Indian community. We understand, for example, that areas of greatest concern to Indians include the prevention and control of alcoholism, the promotion of mental health and the control of middle-ear disease. We hope that the ravages of middle-ear disease—a particularly acute disease among Indians—can be brought under control within five years.

These and other Indian health programs will be most effective if more Indians are involved in running them. Yet—almost unbelievably—we are presently able to identify in this country only 30 physicians and fewer than 400 nurses of Indian descent. To meet this situation, we will expand our efforts to train Indians for health careers.

7. Helping Urban Indians

Our new census will probably show that a larger proportion of America's Indians are living off the reservation than ever before in our history. Some authorities even estimate that more Indians are living in cities and towns than are remaining on the reservation. Of those American Indians who are now dwelling in urban areas, approximately three-fourths are living in poverty.

The Bureau of Indian Affairs is organized to serve the 462,000 reservation Indians. The BIA's responsibility does not extend to Indians who have left the reservation, but this point is not always clearly understood. As a result of this misconception, Indians living in urban areas have often lost out on the opportunity to participate in other programs designed for disadvantaged groups. As a first step toward helping the urban Indians, I am instructing appropriate officials to do all they can to ensure that this misunderstanding is corrected.

But misunderstandings are not the most important problem confronting urban Indians. The biggest barrier faced by those Federal, State and local programs which are trying to serve urban Indians is the difficulty of locating and identifying them. Lost in the anonymity of the city, often cut off from family and friends, many urban Indians are slow to establish new community ties. Many drift from neighborhood to neighborhood; many shuttle back and forth between reservations and urban areas. Language and cultural differences compound these problems. As a result, Federal, State and local programs which are designed to help such persons often miss this most deprived and least understood segment of the urban poverty population.

This Administration is already taking steps which will help remedy this situation. In a joint effort, the Office of Economic Opportunity and the Department of Health, Education and Welfare will expand support to a total of seven urban Indian centers in major cities which will act as links between existing Federal, State and local service programs and the urban Indians. The Departments of Labor, Housing and Urban Development and Commerce have pledged to cooperate with such experimental urban centers and the Bureau of Indian Affairs has expressed its willingness to contract with these centers for the performance of relocation services which assist reservation Indians in their transition to urban employment.

These efforts represent an important beginning in recognizing and alleviating the severe problems faced by urban Indians. We hope to learn a great deal from these projects and to expand our efforts as rapidly as possible. I am directing the Office of Economic Opportunity to lead these efforts.

8. Indian Trust Counsel Authority

The United States Government acts as a legal trustee for the land and water rights of American Indians. These rights are often of critical economic importance to the Indian people; frequently they are also the subject of extensive legal dispute. In many of these legal confrontations, the Federal government is faced with an inherent conflict of interest. The Secretary of the Interior and the Attorney General must at the same time advance both the national interest in the use of land and water rights and the private interests of Indians in land which the government holds as trustee.

Every trustee has a legal obligation to advance the interests of the beneficiaries of the trust without reservation and with the highest degree of diligence and skill. Under present conditions, it is often difficult for the Department of the Interior and the Department of Justice to fulfill this obligation. No self-respecting law firm

would ever allow itself to represent two opposing clients in one dispute; yet the Federal government has frequently found itself in precisely that position. There is considerable evidence that the Indians are the losers when such situations arise. More than that, the credibility of the Federal government is damaged whenever it appears that such a conflict of interest exists.

In order to correct this situation, I am calling on the Congress to establish an Indian Trust Counsel Authority to assure independent legal representation for the Indians' natural resource rights. This Authority would be governed by a three-man board of directors, appointed by the President with the advice and consent of the Senate. At least two of the board members would be Indian. The chief legal officer of the Authority would be designated as the Indian Trust Counsel.

The Indian Trust Counsel Authority would be independent of the Departments of the Interior and Justice and would be expressly empowered to bring suit in the name of the United States in its trustee capacity. The United States would waive its sovereign immunity from suit in connection with litigation involving the Authority.

9. Assistant Secretary for Indian and Territorial Affairs

To help guide the implementation of a new national policy concerning American Indians, I am recommending to the Congress the establishment of a new position in the Department of the Interior—Assistant Secretary for Indian and Territorial Affairs. At present, the Commissioner of Indian Affairs reports to the Secretary of the Interior through the Assistant Secretary for Public Land Management—an officer who has many responsibilities in the natural resources area which compete with his concern for Indians. A new Assistant Secretary for Indian and Territorial Affairs would have only one concern—the Indian and territorial peoples, their land, and their progress and well-being. Secretary Hickel and I both believe this new position represents an elevation of Indian affairs to their proper role within the Department of the Interior and we urge Congress to act favorably on this proposal.

CONTINUING PROGRAMS

Many of the new programs which are outlined in this message have grown out of this Administration's experience with other Indian projects that have been initiated or expanded during the last 17 months.

The Office of Economic Opportunity has been particularly active in the development of new and experimental efforts. OEO's Fiscal Year 1971 budget request for Indian-related activities is up 18 percent from 1969 spending. In the last year alone—to mention just two examples—OEO doubled its funds for Indian economic development and tripled its expenditures for alcoholism and recovery programs. In areas such as housing and home improvement, health care, emergency food, legal services and education, OEO programs have been significantly expanded. As I said in my recent speech on the economy, I hope that the Congress will support this valuable

work by appropriating the full amount requested for the Economic Opportunity Act.

The Bureau of Indian Affairs has already begun to implement our policy of contracting with local Indians for the operation of government programs. As I have noted, the Salt River Tribe and the Zuni Tribe have taken over the bulk of Federal services; other projects ranging from job training centers to high school counseling programs have been contracted out to Indian groups on an individual basis in many areas of the country.

Economic development has also been stepped up. Of 195 commercial and industrial enterprises which have been established in Indian areas with BIA assistance, 71 have come into operation within the last two years. These enterprises provide jobs for more than 6,000 Indians and are expected to employ substantially more when full capacity is reached. A number of these businesses are now owned by Indians and many others are managed by them. To further increase individual Indian ownership, the BIA has this month initiated the Indian Business Development Fund which provides equity capital to Indians who go into business in reservation areas.

Since late 1967, the Economic Development Administration has approved approximately \$80 million in projects on Indian reservations, including nearly \$60 million in public works projects. The impact of such activities can be tremendous; on the Gila River Reservation in Arizona, for example, economic development projects over the last three years have helped to lower the unemployment rate from 56 to 18 percent, increase the median family income by 150 percent and cut the welfare rate by 50 percent.

There has been additional progress on many other fronts since January of 1969. New "Indian Desks" have been created in each of the human resource departments of the Federal government to help coordinate and accelerate Indian programs. We have supported an increase in funding of \$4 million for the Navajo Irrigation Project. Housing efforts have picked up substantially; a new Indian Police Academy has been set up; Indian education efforts have been expanded—including an increase of \$848,000 in scholarships for Indian college students and the establishment of the Navajo Community College, the first college in America planned, developed and operated by and for Indians. Altogether, obligational authority for Indian programs run by the Federal Government has increased from a little over \$598 million in Fiscal Year 1970 to almost \$626 million in Fiscal Year 1971.

Finally, I would mention the impact on the Indian population of the series of welfare reform proposals I have sent to the Congress. Because of the high rate of unemployment and underemployment among Indians, there is probably no other group in the country that would be helped as directly and as substantially by programs such as the new Family Assistance Plan and the proposed Family Health Insurance Plan. It is estimated, for example, that more than half of all Indian families would be eligible for Family Assistance benefits and the enactment of this legislation is therefore of critical importance to the American Indian.

This Administration has broken a good deal of new ground with respect to Indian problems in the last 17 months. We have learned

many things and as a result we have been able to formulate a new approach to Indian affairs. Throughout this entire process, we have regularly consulted the opinions of the Indian people and their views have played a major role in the formulation of Federal policy.

As we move ahead in this important work, it is essential that the Indian people continue to lead the way by participating in policy development to the greatest possible degree. In order to facilitate such participation, I am asking the Indian members of the National Council on Indian Opportunity to sponsor field hearings throughout the nation in order to establish a continuing dialogue between the Executive branch of government and the Indian population of our country. I have asked the Vice President to see that the first round of field hearings are completed before October.

The recommendations of this Administration represent an historic step forward in Indian policy. We are proposing to break sharply with past approaches to Indian problems. In place of a long series of piecemeal reforms, we suggest a new and coherent strategy. In place of policies which simply call for more spending, we suggest policies which call for wiser spending. In place of policies which oscillate between the deadly extremes of forced termination and constant paternalism, we suggest a policy in which the Federal government and the Indian community play complementary roles.

But most importantly, we have turned from the question of whether the Federal government has a responsibility to Indians to the question of how that responsibility can best be fulfilled. We have concluded that the Indians will get better programs and that public monies will be more effectively expended if the people who are most affected by these programs are responsible for operating them.

The Indians of America need Federal assistance—this much has long been clear. What has not always been clear, however, is that the Federal government needs Indian energies and Indian leadership if its assistance is to be effective in improving the conditions of Indian life. It is a new and balanced relationship between the United States government and the first Americans that is at the heart of our approach to Indian problems. And that is why we now approach these problems with new confidence that they will successfully be overcome.

RICHARD NIXON.

THE WHITE HOUSE, *July 8, 1970.*

NOTE.—On the same day, the White House released a summary of the message and the transcript of a news briefing on it by Vice President Spiro T. Agnew and Leonard Garment, Special Consultant to the President.